

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B5

DATE: DEC 24 2012 OFFICE: NEBRASKA SERVICE CENTER



IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal as untimely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) requires the affected party to file the complete appeal within 30 days of service of the unfavorable decision. Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.8(b).

The service center director issued the decision on January 13, 2012, and mailed the decision to the petitioner's then-current address of record [REDACTED]. The service center director properly notified the petitioner of the 33-day deadline to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

The petitioner dated the Form I-290B Notice of Appeal February 3, 2012 and mailed it from a previously unreported address in Mexico City, Mexico. The service center received the appeal on February 22, 2012. The director rejected the appeal because the petitioner submitted the appeal fee in foreign currency rather than in United States dollars. Remittances, such as fees, must be paid in United States currency. See 8 C.F.R. § 103.7(a)(2). A benefit request, such as an appeal, is not properly filed if it does not include the proper fee. See 8 C.F.R. §§ 103.2(a)(1) and (7)(i).

The petitioner subsequently refiled the appeal, with fee, on June 4, 2012 (again in an envelope bearing [REDACTED] return address, although the petitioner listed a Pakistan address on the appeal form itself). Thus, the petitioner did not properly file the appeal until 143 days after the date of the director's decision. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director of the Nebraska Service Center. See 8 C.F.R. § 103.5(a)(1)(ii). The director determined that the late appeal did not meet the requirements of a motion and forwarded the matter to the AAO.

Because the appeal was untimely filed, the AAO must reject the appeal.

ORDER: The appeal is rejected.